

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
to Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	

**Supplement to Request of NOW Licenses, LLC for a
Temporary Waiver of Section 20.18(c) of the Commission's Rules**

NOW Licenses, LLC ("NOW"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules,¹ hereby submits this Supplement ("Supplement") to its Request for Temporary Waiver of Section 20.18(c) of the Commission's Rules (the "TTY Request").² NOW filed the TTY Request on June 25, 2002, seeking a temporary extension of the compliance deadline until June 30, 2004, so that NOW could undertake the necessary network upgrades and acquire TTY-compatible handsets in order to achieve compliance with the TTY rules. Due to recent developments, which are more fully described below, NOW seeks to extend its request such that the deadline for compliance with the TTY rules would be seven months after the date on which the FCC acts on³ an application for FCC consent to the assignment of licenses (the "Assignment

¹ 47 C.F.R. §§ 1.3, 1.925.

² Filed June 25, 2002 in CC Docket No. 94-102.

³ Specifically, seven months from the date on which the FCC either consents to, or denies, this Application.

Application”) from NOW to Dobson Cellular Systems, Inc. (“Dobson”), which is being filed concurrently with this Supplement. The following is respectfully shown:

I. Background

NOW's TTY Request explained that compliance with the Commission's TTY rules would require NOW to upgrade its switch, base stations, and Operational Maintenance and Control Center. Based upon advice it received from Nortel at the time, NOW informed the Commission that an upgrade of switch software to version GSM13 was necessary, and that the company was undertaking such upgrade so that it could achieve compliance with both the TTY and CALEA rules by June 30, 2004. NOW explained that the length of time required to accomplish this switch upgrade was based, in part, on its inability to secure quotes or commitments from Nortel and other vendors due to NOW's small size and lack of market power, as well as a lack of available capital resources to complete the necessary upgrades within a shorter timeframe. Based upon those factors, NOW sought a two-year extension of the compliance deadline until June 30, 2004. Shortly after NOW filed its TTY Request, the Commission released an order granting similar requests filed by several other carriers prior to NOW's filing.⁴ NOW's TTY Request, and the requests filed by several other carriers, remain pending before the Commission.

⁴ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced E911 Emergency Calling Systems, Order*, 17 FCC Rcd. 12084 (2002).

II. Changed Circumstances Warrant a Further Extension of the Compliance Deadline

Recent developments have resulted in a dramatic change of circumstances for NOW since it filed its TTY Request. NOW has executed an Asset Purchase Agreement with Dobson which contemplates that, subject to FCC consent, NOW will assign all of its FCC licenses (the "Assignment") to Dobson. In connection with that transaction, Dobson also will purchase many of NOW's network assets, including numerous base station facilities and related PCS equipment. Dobson will not purchase NOW's switch. Instead, Dobson will construct and install a new switch to operate the systems post-closing. The parties anticipate that they will consummate the Assignment sometime between May and August of 2004. In view of this timing, any additional upgrades to its switch that NOW undertakes in order to achieve TTY compliance in connection with its current extension request through June 30, 2004 will have little relevance, since NOW's switch will be replaced by Dobson's more advanced switch almost concurrently.

In addition, Nortel very recently advised NOW that a far more substantial upgrade to NOW's switch is necessary for TTY compliance than was first anticipated. Specifically, in connection with NOW's upgrade of its switch to achieve CALEA compliance, Nortel notified NOW that Nortel would no longer offer the GSM13 software upgrade. Instead, NOW would be required to upgrade to GSM15 software to achieve TTY compliance. This additional upgrade is estimated to cost over \$1,000,000. This additional upgrade will require a significant capital investment over and above the

amount NOW had budgeted for network upgrades to achieve TTY and CALEA compliance in reliance on Nortel's earlier advice.

In light of these recent developments, NOW respectfully requests a further extension of the TTY rules to a date that is at least seven months from the date on which the FCC acts on the instant Application. This further extension is necessary and justified in either circumstance. If the Application is granted and the Assignment consummated, as the parties anticipate, Dobson will need the additional time to implement its TTY compliance plan. If the Assignment is not consummated, NOW will need this additional time to implement the necessary upgrades in order to achieve compliance. NOW respectfully submits that a further extension of the TTY rules is appropriate under Sections 1.3 and 1.925 of the Commission's Rules,⁵ as demonstrated below.

III. Waiver is Justified Under FCC Rules 1.3 and 1.925

FCC Rule 1.3⁶ provides that Commission rules may be suspended or waived "for good cause shown." NOW's TTY Request demonstrated that good cause exists for the Commission to grant NOW an extension of the compliance deadline through June 30, 2004. Among other things, NOW demonstrated that, as a small carrier with limited bargaining power and capital resources, it required additional time to make the necessary upgrades to achieve TTY compliance. The new circumstances described above lend further support to NOW's demonstration in this regard. While NOW originally was

⁵ 47 C.F.R. §§ 1.3, 1.925.

⁶ 47 C.F.R. § 1.3.

advised by Nortel that an upgrade to GSM13 software in NOW's switch would result in compliance with the TTY rules, Nortel very recently advised NOW that Nortel will no longer make available the GSM13 upgrade, but instead will require NOW to upgrade to GSM15. This additional upgrade would require an additional capital expenditure estimated at over \$1,000,000 -- an amount that NOW has had no opportunity to include in its financial modeling or service plans. Under these circumstances, which were outside of NOW's control or expectations, equity warrants providing NOW with additional time to plan and implement a capital-intensive system upgrade of this type in the event the parties do not consummate the Assignment. Good cause also exists to grant a waiver in the event the Assignment is consummated. Dobson has advised NOW that it plans to install a new switch to operate the network post-closing, and has a detailed plan to achieve TTY compliance using that new switch. Based upon that plan, Dobson has advised NOW that it anticipates that it will have the switch integrated into the network, tested, and fully TTY compliant within seven months of Commission action on the Assignment Application. In the absence of a further extension of NOW's TTY Request (which seeks an extension until June 30, 2004), it is possible that the requested extension period will expire on the eve of closing. This would not provide Dobson with any opportunity to complete installation and testing of its switch, or to implement its TTY compliance plan. Since Dobson has a compliance plan in place, with specific timeframes targeted for compliance, good cause exists to provide Dobson with some flexibility to implement that plan.

Further, requiring NOW to make the substantial, and unexpected, additional capital investment into a switch which will be replaced in the near future is not fiscally responsible. Without a further extension, NOW would be required to expend an additional \$1,000,000 (at least) of its very limited resources in order to achieve compliance for the brief period from June 30, 2004 until consummation of the Assignment – a period likely to be only days or perhaps weeks. The extremely brief period of compliance is far outweighed by the capital outlays that would be required in the process.

Waiver also is appropriate under Section 1.925, which provides that the Commission may grant a waiver if it is shown that the “underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest.” The purpose of the TTY rules is to require carriers to achieve compatibility between TTY devices and digital wireless phones as quickly as possible and to cause wireless carriers to identify TTY compatibility as a priority. As described in its TTY Request, NOW did take steps to develop a plan of compliance with the TTY rules, and was progressing toward such compliance. At the same time, NOW was undertaking network upgrades necessary to achieve compliance with CALEA. NOW has completed the upgrades to its network related to CALEA, and its switch is now CALEA-compliant. NOW understood that certain additional upgrades toward which it was working would result in TTY compliance as well. It was until only recently that NOW thought it was progressing toward such compliance. Notwithstanding this apparent set-back, there still is a

definitive plan for compliance with the TTY rules with respect to the PCS systems subject to this application. As noted above, Dobson's compliance plan contemplates that the new switch will be installed and operational within seven months from the date of Commission action on the Assignment Application. Thus, the underlying purpose of the TTY rules -- the provision of 911 service to TTY device users -- continues to be the primary focus.

Finally, NOW respectfully submits that a further extension of the TTY compliance deadline would serve the public interest. A grant of the TTY Request will enable the parties to consummate the Assignment, which will introduce into several of the subject markets a strong competitor, with a large regional footprint and next-generation network components that will provide service in compliance with significant FCC mandates such as the TTY rules.

IV. Conclusion

Based upon the foregoing, NOW respectfully requests a further extension of its TTY Request through a date that is seven months after the Commission acts on the Assignment Application.

Respectfully submitted,

NOW LICENSES, LLC

By:



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December 23, 2003

Declaration of Christopher Hahn

I, Christopher Hahn, do hereby declare under penalty of perjury that:

1. I am the Network Operations Manager of NOW Licenses, LLC.
2. I have read the foregoing "Supplement to Request of NOW Licenses, LLC, for a Temporary Waiver of Section 20.18(c) of the Commission's Rules."
3. I have personal knowledge of the facts set forth therein.
4. Except with respect to those facts of which judicial notice may be taken, those facts are true and correct to the best of my knowledge, information, and belief.

Executed this 22nd day of December, 2003



Christopher Hahn